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the purchase price. After delivery of the register to the buyer, but before the maturity of the note, the register was accidentally destroyed. *Held*, that the plaintiff can recover on the note. *National Cash Register Co. v. South Bay Club House Association*, 64 N. Y. Misc. 125 (Sup. Ct.).

The present decision is the first in New York squarely placing the risk of loss in a conditional sale upon the buyer. See *Humeston v. Cherry*, 23 Hun (N. Y.) 141. *Contra*, *Wolf v. Di Lorenzo*, 21 N. Y. Misc. 521. For a discussion of the principles involved, see 9 HARV. L. REV. 106; 13 *ibid.* 608; 14 *ibid.* 626; 19 *ibid.* 388.

SALES — STOPPAGE IN TRANSITU — BROKEN TRANSIT. — A bought goods of B in the city of M, F. O. B. at M, to be marked "NXZ Adelaide," and sent to C at the city of L, for loading on ships. C was a forwarding agent, and had received orders from A to forward such goods by ship to Adelaide. Before the ship sailed, but after the goods had been loaded on board, A became bankrupt, and B served notice to stop *in transitu*. *Held*, that the notice is effective. *Kemp v. Ismay, Imrie & Co.*, 100 L. T. R. 996 (Eng., K. B. D. Mch. 29, 1909). See NOTES, p. 142.

SET-OFF AND COUNTERCLAIM — RECOUPMENT AGAINST CREDITOR'S ASSIGNEE. — A contractor assigned to the plaintiff his claim against the defendant for payment due under two building contracts. After the defendant had notice of the assignment, the assignor failed to complete the buildings. *Held*, that in an action by the plaintiff on the assigned claim, the defendant can recoup for the assignor's default. *American Bridge Co. of New York v. City of Boston*, 88 N. E. 1089 (Mass.).

The statutes of set-off do not allow a debtor to set off against his creditor's assignee a debt from the assignor which matured after notice of the assignment. *Watson v. Mid Wales Railway Co.*, L. R. 2 C. P. 593. After the ownership of the claim has by notice to the debtor vested in the assignee, a claim maturing against the assignor is no longer a debt from the owner of the principal claim. *Meyers v. Davis*, 22 N. Y. 489. *Cf. St. Andrew v. Manchaug Mfg. Co.*, 134 Mass. 42. Since counterclaim, too, is a cross action, the same rule is probably applicable. *Spencer v. Babcock*, 22 Barb. (N. Y.) 326. The better explanation of the common law remedy of recoupment is that the defendant attacks the plaintiff's cause of action by showing that he has failed in counter performance, wherefore the defendant need not perform his promise, but only compensate the plaintiff for what he has done. See *Mondel v. Steel*, 8 M. & W. 858. But see *Dushane v. Benedict*, 120 U. S. 630. *Cf. Basten v. Butler*, 7 East 479. Under this doctrine the principal case is sound. Against the assignee the debtor may well attack the validity of the contract sued on; for assignment cannot cure inherent weakness. *Ford v. White*, 16 Beav. 120.

SURETYSHIP — NATURE OF SURETYSHIP CONTRACT — GUARANTY. — The plaintiff bank agreed to rediscount certain notes made by customers of the defendant bank, in consideration whereof the defendant bank orally agreed to guarantee the payment of the notes at maturity. *Held*, that the plaintiff bank may recover on the promise. *Bank of Pike v. People's National Bank*, 118 N. Y. Supp. 641 (Sup. Ct.). See notes p. 136.

TRUSTS — CESTUI'S INTEREST IN THE RES — RIGHT OF CESTUI'S EXECUTOR TO UNEXPENDED INCOME OF SPENDTHRIFT TRUST. — The testatrix left personalty to trustees to apply the income to the support and maintenance of her imbecile nephew and after his death to the trustees absolutely. *Held*, that the unexpended income goes to the trustees, and not to the *cestui's* administrator. *Ross's Estate*, 66 Leg. Int. 562 (Pa., Dist. Ct.).

At common law accumulated income became a part of the principal of the